



State of Michigan Ingham County Circuit Court

Senate Bill 652 – JUDGE ROSEMARIE AQUILINA TALKING POINTS

- **Makes Swiss Cheese out of the State of Michigan Constitution:**
 - Violation of Separation of Powers
 - Violation of Right to a Trial
 - Violation of Access to the Court
 - Violation of Due Process
- **Takes Away Appellate Rights of the Parties:**
 - Can't Appeal to the Court of Appeals—it is a lateral body and a conflict of interest
 - Only Appeal is to the Supreme Court who takes Appeals by Application of Leave to Appeal
 - There is NO APPEAL BY RIGHT
 - THE STATUTE AND THE COURT RULE ALLOW FOR AN APPEAL BY RIGHT, BUT SB 652 HAS NO MECHANISM FOR THAT
 - The Supreme Court is shrouded by "Dark Money" so the Inference of Impropriety which all Courts and Judges Seek to Avoid Cannot Be Avoided—They Can Only Take Cases by Leave From Their Contributors—Which Are Hidden, *So Attorneys Cannot Ask for Recusal*. A violation of Ethics, which will remain hidden from discovery.
 - Only Addresses Special Interests because of "Dark Money" and the lost rights of Appeal.
 - Convenient Administration of Justice is obliterated.
- **Expensive to Taxpayers and to Litigants:**
 - No analysis has been done of the cost savings since Court of Claims was centralized in Ingham County and the DATA IS AVAILABLE.
 - THERE IS NO LINE ITEM FOR THE MILLIONS THIS BILL WILL COST TAXPAYERS.
 - LITIGANTS will not be able to afford attorney fees—YES it costs significantly more for an attorney to argue cases before Court of Appeals Justices.
 - Legislators can't regulate how much attorneys can charge and attorneys have the right to charge more before the Court of Claims with Court of Appeals Justices.
 - Attorneys representing the State of Michigan primarily work in Lansing as do many witnesses. This will be a significant cost in time and travel.
 - There is an expensive computer program that must be purchased and maintained and training must be ongoing.
 - COURT OF APPEALS JUDGES BECOME TRIAL JUDGES with Multiple Hearings AND Discovery Has NOT Been Planned For in This Bill—Scheduling Orders, Emergency Motions and Access to the Judges will be needed. How will this be accomplished? It will be VERY EXPENSIVE under this SB 652.

- **CHILLING EFFECT**

- The passage of SB 652 creates an inherent danger and clear message that the next time the legislature doesn't like a ruling from the bench, they will legislate.
- Furthermore, this may have a chilling effect on Judges who believe this backlash will hurt them politically to include being singled out by the Supreme Court who makes decisions about cases we rule on, who becomes Chief Judge, and other important issues—is that the kind of judges you want in this state?

- **A MONEY PIT**

- THERE IS NO DOUBT SB 652 will **COST MILLIONS TO THE TAXPAYER** and *THERE IS NO FUNDING MECHANISM* in the Bill. SB 652 should be referred to **APPROPRIATIONS**.
- Because this is a clear legal issue, SB 652 should also be referred to **JUDICIARY**.

- **WHAT SHOULD THE LEGISLATURE DO?**

- **Cleanup Campaign Finance and the "Dark Money!"**
- **Protect the Constitution and Separation of Powers and all rights afforded to the People of this Great State You Swore to Uphold.**
- **Protect Constituents' Right to a Fair Legal System with all Appellate Rights intact and with the transparency the legal system deserves to operate under at all levels.**

- **REMEMBER THE OATH YOU TOOK WHEN ELECTED: TO UPHOLD THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF MICHIGAN**

- *That is the Only Oath You Made.*
- *Please remember your constituents and keep your promise.*

Remember Legislators, Someday, It May Be You Who Need To Come Before Judges.

Don't YOU Want A Clean, Constitutional Process?



State of Michigan
Ingham County Circuit Court

Senate Bill 652 An Analysis

November 5, 2013

House Government Operations Committee

1) Appeal Issue

-S.B. 652 is attempting to remove the Court of Claims from the jurisdiction of the Ingham County Circuit Court to the Court of Appeals.

-Under S.B. 652 Sec. 6404(1), the Court of Claims would consist of four (4) Court of Appeals Judges from at least two (2) Court of Appeals districts assigned by the Michigan Supreme Court.

-Pursuant to MCR 7.203(A)(1), if the Circuit Court produces a final judgment or order acting as the Court of Claims, a party had an Appeal of Right to the Court of Appeals for review of that final judgment or order.

-S.B. 652 provides no guidance on a new appellate process for the Court of Appeals acting as the Court of Claims. The following are three scenarios:

- In one scenario, the Court of Appeals keeps its Appeal of Right jurisdiction and reviews its own decisions or decisions of its colleagues, creating a conflict of interest.
- In a second scenario, S.B. 652 is amended to allow an Appeal of Right to the Michigan Supreme Court. Currently, pursuant to MCR 7.301(2), review by the Michigan Supreme Court of a case pending in or after decision by the Court of Appeals is governed by MCR 7.302, which is an appeal by *Application of Leave to Appeal*, meaning that the Michigan Supreme Court can choose to take the case, depending on the issues involved.
 - MCL 600.308 Appeal of Right
- The last scenario is appellate jurisdiction is left unchanged and there is no adequate appellate process for parties beyond the original case in the Court of Claims. This would happen because the Court of Appeals could not review itself without creating a conflict of interest on an appeal of right, and if the Michigan Supreme Court denies a leave to appeal, the Court of Appeals is the final decision maker pursuant to MCR 7.302(H)(3).

2) Money Issue

-Senator Rick Jones argues S.B. 652 will reduce State funding reimbursements to the Ingham County Circuit Court by approximately \$500,000 per year.

-However, with the Court of Appeals acting as the Court of Claims, the structure changes from a centrally located set of Courts to a shifting set of Courts. Under S.B. 652 Sec. 6410(5) the Court of Claims will sit in the Court of Appeals district where a court of appeals judge (acting as a judge for the Court of Claims) is sitting. This will require the Attorney General to travel to wherever the Court of Claims is sitting at any given time pursuant to S.B. 652 Sec. 6407. This will also require Plaintiffs to travel all over the state, rather than to a centrally located area, depending on where the Court of Claims is sitting.

-Secondly, though S.B. 652 Sec. 6421(3) establishes fees in the Court of Claims will be at the rate established by statute or court rule for circuit courts of this state, the additional fees have not been discussed. Attorneys charge far higher rates when preparing and taking a case to the Court of Appeals. The Court of Appeals is not equipped to handle full cases dealing with the entering of evidence, witness testimony, and trials, so more money will be spent to accommodate this transition. Court of Appeals Judges will have to travel from their respective districts multiple times, and to multiple places, to sit on the Court of Claims.

-Lastly, Michigan does not have a compulsory counterclaim procedure or compulsory joinder of claims. So, if the Court of Appeals becomes the Court of Claims, a Plaintiff may be suing the State in an action, but simultaneously be suing their insurance company arising out of the same transaction or occurrence. Because of this new structure, Plaintiffs would have to file two separate actions in two separate courts, increasing filing costs, travel costs, attorney fees, and use of judicial resources.

- In fact, the Michigan Court of Appeals held in *Freissler v State*, 53 Mich App 530; 220 NW2d 141 (1974), that joinder of plaintiff's action in Court of Claims against State and State Highway Commission for injuries sustained in automobile accident with her action in circuit court against county and county road commission arising from same automobile accident would promote convenient administration of justice.

3) S.B. 652 6404(2)

-S.B. 652 Sec. 6404(2) transfers all pending cases in the current Court of Claims to the Court of Appeals effective the date of the amendatory act that added this subsection. This section also allows any later filed Court of Claims matters to be transferred to the Court of Appeals.

-Essentially, S.B. 652 Sec. 6404(2) takes several controversial issues away from Judges elected by the People and hands them over to Judges that were hand-picked and appointed by the party being sued, the State. These controversial issues include the

Detroit Bankruptcy, the appointment of the Emergency Manager Kevin Orr, the Teacher's Pensions, OMA, NERD Fund, and many more.

-Not only does it remove controversial cases from elected Judges, it also strips the Circuit Court of any of its declaratory and equitable powers in those cases that are pending, filed in the future, and even those cases that are already under advisement. So not only does the Court of Appeals have to transition into a trial court, it would allow itself to hear cases that have already been heard in the Circuit Court and announce its own rulings, increasing costs and changing reasonable decisions of judges without applying any standards or review.

- This is highly disruptive to cases. For example, there are current Court of Claims cases that the Circuit Court currently has under advisement and is in the process of drafting a final decision.

-Senator Rick Jones will most likely argue this is to alleviate an already crammed Circuit Court docket. However, not one (1) Circuit Court Judge was contacted about the Court of Claims being a burden on the docket. Only 160 Court of Claims matters were filed in 2012, and 132 are pending in 2013, with 36 being stayed. This is an insignificant percentage of the docket (less than 2%), and is not a sufficient reason to take jurisdiction away from the Circuit Court.

4) Political Move

-This seems to be a ploy for a Republican led government to take matters filed against the State of Michigan out of the hands of impartial, or democratic leaning, judges (who often rule against the State) and put them in the hands of hand-picked judges appointed by the same Republican government. If they were worried about travel and costs, S.B. 652 would allow Plaintiffs to file a Court of Claims matter in their own district and have it heard by that district's Court of Appeals Judge, not a floating district headed by a Republican judge. Instead, they seem to be intentionally keeping Court of Claims cases from being heard in areas that are Democratic leaning.

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

XXXXXXXXXX,

Plaintiffs,

v

XXXXXXXXXX,

Defendant.

SCHEDULING CONFERENCE ORDER

Honorable Rosemarie E. Aquilina

Docket No: XX-XXXXXX-MT-C30

At a session of said Court held in the City of
Lansing, County of Ingham, State of Michigan,
this ____ day of _____, 2013.

PRESENT: The Honorable Rosemarie E. Aquilina
 30th Judicial Circuit Court Judge

IT IS HEREBY Stipulated and Agreed to the following:

1. Plaintiff's Expert Witnesses must be named no later than by: _____.
 Defendant's Expert Witnesses must be named no later than by: _____.
 All Other Witnesses must be named no later than by: _____.

**AFTER THESE DATES, EXCEPT FOR REBUTTAL WITNESSES, ADDITIONAL WITNESSES MAY
TESTIFY ONLY UPON MOTION FOR GOOD CAUSE**

2. Discovery shall be completed on or before: _____.

***PURSUANT TO MCR 2.301, ADDITIONAL DISCOVERY PERMITTED BEYOND THIS
DATE ONLY UPON A MOTION FOR GOOD CAUSE.***

3. Motions to Amend Pleadings shall be filed and heard by: _____.

4. Motions for Summary Disposition shall be filed and heard by: _____.

NOTICE:

- a. MCR 2.116 MOTIONS must be scheduled at least 10 weeks in advance of when you want the motion heard. Please schedule with the Judicial Assistant at 517-483-6526.
- b. There shall be no adding matters to be heard without permission of the Judicial Assistant i.e. each separate motion must be scheduled separately.
- c. Any motion longer than one half hour (15 minutes each side) may be scheduled or moved by the court to a day other than on Wednesday's Motion Docket.
- d. Filing and serving a Summary Disposition Motion and/or responsive pleading time frames shall be STRICTLY ADHERED TO. See MCR 2.116.

5. Motions in Limine shall be filed and heard no later than two weeks prior to Trial.

6. Judge's Copies of all Motions and Briefs shall be provided to the Judge through her Judicial Assistant seven (7) days prior to the date the motion is to be heard. Failure to do this may result in a rescheduling or in the non-consideration of the documents filed late.

7. The parties may submit this case to Facilitative Mediation pursuant to MCR 2.411.
 The parties may be charged a fee by the facilitative mediator for untimely cancellations.
 - a. The mediator stipulated to is: _____.
 - b. The Court shall appoint a mediator and send notice to the parties upon failure to name a mediator or by agreement of the parties.

8. **Case Evaluation (MCR 2.403)** may be scheduled after _____ before a **TORT/COMMERCIAL/LABOR & EMPLOYMENT Panel. (CIRCLE TYPE PANEL NEEDED)**

Adjournments of Case Evaluation are not favored and shall be granted only if a specific replacement date has been obtained from the ADR Clerk (517) 483-6500 ext. 6718. A new date may be scheduled only upon a showing of extraordinary circumstances and with explicit directions contained in an Order signed by the Judge. Any adjournments granted after the dates when briefs are due under MCR 2.403 shall require payment of a new case evaluation fee. Additional blocks of time may be requested by contacting the ADR clerk at least 28 days prior to the case evaluation date and must be accompanied by the additional fee.

9. **Community Dispute Resolution (MCR 5.143)** may be scheduled at the parties request by contacting the Case Manager at (517) 485-2274.
10. **Settlement/Status Conference** pursuant to MCR 5.143, may be scheduled at the parties' request, either in person or by telephone by contacting the Judicial Assistant at (517) 483-6526 or by Court order.
11. If this is a **Court of Claims** case: Plaintiff must file a **MOTION TO CONSOLIDATE** or certify in writing not more than 60 days after an Answer is filed by Defendant, why this case cannot be consolidated with any "companion" Circuit Court Case.
12. Trial will be scheduled after _____, 20____ by the Case Processing Coordinator who will schedule both **Pre-Trial and Trial** dates. These dates may be changed by the Court by stipulation of the parties and approval of the Court. **CLIENTS MUST BE PRESENT AT PRETRIAL AND TRIAL.**

- a. The parties request a Jury Trial* _____; estimated length of Jury Trial _____.
*Only if consolidated

Proposed Jury Instructions shall be agreed to by Counsel no later than 2 weeks before trial and presented to the Court no later than the day of trial. The Court will decide any conflict by Motion, or on the day of Jury Selection/Trial, as appropriate.

- b. Bench Trial _____; estimated length of Bench Trial _____.
13. **ALL STIPULATED AMENDMENTS** to this Order shall be submitted to this Court and shall include new dates for the Court's approval and signature, however, parties may stipulate to adjourn the Pre-Trial/Trial once without prior Court approval. After that, good cause must be shown to the Court and written permission received with a new scheduled date.
14. **Failure to comply with this Court's Order, time and notification requirements, and MANDATORY ADR** may result in Contempt of Court sanctions.

STIPULATED BY:

Attorney for Plaintiff

Attorney for Defendant

ORDER

THIS HONORABLE COURT having reviewed the Stipulation of Counsel and being satisfied, now therefore, **IT IS SO ORDERED.**

Hon. Rosemarie E. Aquilina (P37670)
30th Circuit Court Judge

PROOF OF SERVICE

I certify that copies of this Order were served upon all counsel/parties of record via First Class U.S. Mail, and the ADR Clerk and Case Processing Coordinator via County Courier on: _____.

Judicial Assistant to Judge Aquilina